In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 1875 of 1996
Date of decision: 11.11.2009

State of Punjab and another

.....Appellants

Versus

Ex.Constable Mehar Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.J.S.Sandhu, AAG, Punjab,
for the appellants.

Mr.S.S.Brar, Advocate,
for the respondent.

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SABINA, J.

Plaintiff-respondent filed a suit for declaration, which was decreed by the Sub Judge, IIIrd Class, Ferozepur vide judgment and decree dated 3.8.1995. In appeal, the said judgment and decree were upheld by the Additional District Judge, Ferozepur vide judgment and decree dated 2.3.1996. Hence, the present appeal by the defendants.

Brief facts of the case, as noticed by the trial Court in

para Nos. 1 and 2 of its judgment, are as under:-

> " This suit has been filed by the plaintiff for obtaining a decree of declaration that the order dated 25.5.1993 passed by Senior Superintendent of Police, Ferozepur discharging the plaintiff from service under Rule 12.21 of Punjab Police Rules read with order dated 22.11.1993 passed by Deputy Inspector General of Police, Ferozepur Range, Ferozepur rejecting his representation is illegal, null and void, ultravires, unconstitutional against the rules of law and natural justice and is in-operative on the rights of the plaintiff with consequential relief in the form of re-instatement in service, arrears of pay, promotion. The plaintiff has pleaded in his plaint that on 25.5.1993, he was posted at Police Lines, Ferozerpur when the S.S.P.Ferozepur discharged him from service vide his order dated 25.5.1993. He filed the representation to the D.I.G.Ferozepur Range, Ferozepur which was dismissed on 22.11.1993. Hence, this suit.
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> 2. Notice of the suit was given to the defendants who contested the claim of the plaintiff by filing written statement. In his written statement the plaintiff alleged that order dated 25.5.1993 issued by S.S.P.Ferozepur and order dated 22.11.1993 issued by D.I.G.Ferozerpur

are correct and legal which were passed in accordance with the rules."

On the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether order dated 25.5.1993 passed by S.S.P.Ferozepur read with order dated 22.11.1993 passed by D.I.G.Ferozerpur Range, Ferozerpur is illegal, null and void OPP

2. Relief.

Learned State counsel has submitted that the plaintiff had been dismissed from service in terms of Rule 12.21 of the Punjab Police Rules, 1934 (for short 'the Rules') and hence, no enquiry was required to be conducted against the plaintiff.

Learned counsel for the respondent, on the other hand, has submitted that the plaintiff had been discharged from service on the allegation of mis-conduct against him but no enquiry was conducted against the plaintiff with regard to the alleged mis-conduct. The plaintiff had completed his duty at the time of checking by the Senior Superintendent of Police, Ferozerpur. The plaintiff had been re-instated in service in pursuance of the judgment and decree of the Courts below. Now the plaintiff has died on 17.3.1999. The widow of the plaintiff will get the pensionary benefits

After hearing learned counsel for the parties, I am of the opinion that the present appeal deserves to be dismissed.

There is no quarrel with the proposition of law that under Rule 12.21 of the Rules, a constable can be discharged if he is not likely to become a good police officer. The plaintiff was appointed as a Constable on 14.8.1992. the impugned order discharging him from service was passed on 25.5.1993. The representation filed by the plaintiff against the order of discharge was dismissed by the Director General of Police, Ferozepur Range, Ferozerpur Cantt. Vide order dated 22.11.1993.

Learned Additional District Judge in the impugned judgment had held as under:

> " In such like cases the concerned authorities are to consider the question objectively on the basis of the material put before them and only then they are to take the decision whether the Constable is unlikely to prove an efficient police officer. Admittedly and undisputedly there was no material before the Senior Superintendent of Police while passing the impugned order of discharge reflecting on the conduct of the respondent. There is every warrant to conclude that the order of dated 25.5.1993 was passed an extraneous consideration and shot circuit method was adopted to avoid regular enquiry being conducted to dispense with the services of the respondent."

On 16.5.1993, the plaintiff was working as a guard duty at

Shaheed Bhagat Singh Stadium along with others. The case of the plaintiff is that he had completed his duty from 9.00 p.m. to 12.00 p.m. When the checking was conducted by the Senior Superintendent of Police, Ferozerpur, the officials present at the spot were found to be sleeping. The plaintiff was not present at the spot as he had already finished his duty. The impugned order of discharge was passed under Order 12.21 of the Rules. The case of the plaintiff further was that there was no material before the Senior Superintendent of Police, Ferozerpur to form an opinion that the plaintiff was not likely to prove to be a good police officer. The defendants have not led any evidence in support of their case. The defendants have not led any evidence on record that there was any material before the Senior Superintendent of Police, Ferozerpur, when the impugned order of discharge was passed. In these circumstances, learned Additional District Judge had rightly held that the impugned order of discharge had been passed on some extraneous consideration. Moreover, now the plaintiff, who was allowed to join duty in pursuance of the decision of the Courts below, has died.

No substantial question of law arises in this regular second appeal. Accordingly, the same is dismissed.

(SABINA)
JUDGE

November 11, 2009
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